

Jill A. Higham
The Higham Law Office
1001 E. Harmony Rd.
Suite, A-366
Fort Collins, CO 80525
307-399-1838
fax: 970-372-6463

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 10-CR-329-7-F
)	
)	
ALEX GARCIA, JR.)	
Defendant.)	
)	
)	

**MOTION TO RECONSIDER PRETRIAL DETENTION AND REQUEST FOR
HEARING**

Comes now the Defendant by and through his attorney, Jill A. Higham, and hereby submits this Motion To Reconsider Pretrial Detention and Request for Hearing. In support of this Motion, Defendant states as follows:

1. Mr. Garcia appeared in a Detention Hearing pursuant to 18 U.S.C. § 3142 before Magistrate Dennis L. Beck in the U.S. District Court, Eastern District of California, on December 3, 2010.

2. At the hearing, the Court ruled Defendant had failed to rebut the Government's presumption that no condition or combination of conditions will reasonably assure the

appearance of Mr. Garcia as required and the presumption that Mr. Garcia would be a risk to the community.

3. Defendant moves this Court to reconsider the previous ruling on pretrial detention based in part on the following:

- a. Mr. Garcia has a strong family support system in his hometown of Fresno, CA.
- b. Mr. Garcia's sister and brother-in-law, Priscilla Mendoza and Thomas Mendoza, who have been married for eleven (11) years, are willing to allow Mr. Garcia to live in their home until his trial date on September 26, 2011, and they agree to report any violations of his pre-trial release to the probation department and any other appropriate authorities immediately.
- c. Ms. Priscilla Mendoza has no criminal record and has been employed as an office manager at the California Digestive Disease Center in Fresno, CA for the past four (4) years.
- d. Mr. Thomas Mendoza has no criminal record and has been employed as a dropout prevention counselor at the W.E.B. DuBois Public Charter School in Fresno, CA for the past eleven (11) years. Mr. Mendoza has used his professional training to serve as a healthy role model for Mr. Garcia. (Please see Exhibit "A" - Letter from Mr. Mendoza).
- e. Mr. Garcia's fiancée, Ms. Jennifer Borboa, gave birth to Mr. Garcia's daughter on August 4, 2011. If released, Mr. Garcia would have the opportunity to meet this child and assist Ms. Borboa with parenting duties. (Please see Exhibit "B" - Letter from Ms. Borboa).
- f. Mr. Garcia also has other children requiring his attention and financial support

including his eight-year-old son, Robert Saldana, who suffers from Hemidystonia that causes paralysis on one side of his body. Robert receives Botox injections in his arm and foot and other treatment for this condition, and his mother must make frequent trips from Fresno to the Children's Hospital Central California in Madera, CA and to specialists in San Francisco, CA. If released, Mr. Garcia could spend the next several weeks assisting with Robert's medical needs and the associated expenses and travel as well as tend to duties with his other children. (Please see Exhibit "C" - Robert's medical records).

g. If released, Anthony Garcia, Mr. Garcia's stepfather, is willing to employ him prior to trial at the family's carpet and tile business in Fresno. (Please see Exhibit "D" - Letter from Anthony Garcia).

h. Mr. Garcia's mother, Tammy Aguilar Garcia, recently suffered a transient ischemic attack or "mini-stroke" and is in poor health. Prior to Mr. Garcia's incarceration, he helped his mother pick up her prescriptions and he ran other errands for her. (Please see Exhibit "E" - Letter from Ms. Aguilar Garcia and Exhibit "F" Ms. Aguilar Garcia's ER discharge form).

i. Since being incarcerated, Mr. Garcia has not received one write-up from any of the deputies at either detention center where he's been detained. Sgt. Erin Japp, of the Logan County Sheriff's Office, describes Mr. Garcia as the following: "Mr. Garcia has always treated all of the deputies at our facility with the utmost respect and he carries himself with this same mannerism in the pods with other inmates." (Please see Exhibit "G" - Letter from Sgt. Japp).

j Mr. Garcia is willing to comply with curfews, random urinalyses, an ankle

bracelet, or any other supervision or monitoring device that the court deems necessary while he is out on bond.

k. Mr. Garcia agrees to attend substance abuse counseling while on release on bond.

4. While the burden of producing evidence to rebut the presumption against release is on the defendant, this burden is not a heavy one. However, the ultimate burden of persuasion is on the government. United States v. Stricklin, 932 F.2d 1353 (10th Cir. 1991). Based on the factors outlined in 18 U.S.C. § 3142 and existing case law, Mr. Garcia is a good candidate for pretrial release.

WHEREFORE, the Defendant, Alex Garcia, Jr., requests an order setting a detention hearing and that this Court reconsider its previous decision to detain him prior to trial.

DATED this 4th day of August, 2011.

Respectfully submitted,

/s/ Jill A. Higham
Jill A. Higham
The Higham Law Office
1001 East Harmony Road, Suite A-366
Fort Collins, CO 80525
307-399-1838

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on the 4th day of August, 2011, by district court electronic submission to all parties.

/s/ Jill A. Higham
Jill A. Higham